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7 Proposed Attorneys for NexPrise, Inc., Debtor and
 8 Debtor in Possession

9 **UNITED STATES BANKRUPTCY COURT**

10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 In re:
 12 NEXPRISE, INC., a Delaware corporation,
 13 Debtor and Debtor in
 14 Possession.

15 Tax ID # 77-0465496

Case No. 11-00742-11

Chapter 11

**Declaration of John Lynch In Support Of
 First Day Motions**

Date: TBD
 Time: TBD
 Place: Department 2, Room 118
 325 W. F Street
 San Diego, CA 92101
 Judge: Hon. Louise D. Adler

20 I, John Lynch, declare as follows:

21 1. I am the Chief Executive Officer, President, and member of the Board of Directors of
 22 NexPrise, Inc. (“NexPrise” or the “Debtor”). In these capacities, I am generally familiar with the day-to-
 23 day operations, business and financial affairs of the Debtor. I submit this Declaration in support of the
 24 Debtor’s chapter 11 petition and “first-day” relief that the Debtor has requested in the first day motions
 25 (“First Day Motions”) identified below and to assist the Court and other interested parties to understand
 26 the circumstances that compelled the commencement of this chapter 11 case (the “Case”).

27 2. Except as otherwise stated, all facts contained within this Declaration are based on my

1 personal knowledge, my discussions with other members of the Debtor's management, my review of
2 relevant documents, and/or my opinion, relying on my experience in the industry and knowledge of the
3 Debtor's operations and finances. If I were called upon to testify, I could and would competently
4 testify to the matters set forth herein. I am authorized to submit this Declaration on behalf of the
5 Debtor.

6 3. As Chief Executive Officer and President, I oversee and direct all of the
7 Debtor's business operations, including, but not limited to, financial planning, financial
8 reporting, and cash management activities, and I have been actively involved in developing
9 and implementing the Debtor's business strategies. I have reviewed and worked extensively
10 with the Debtor's books and records, including the Debtor's financial statements and projections,
11 business plans, analyses, reports, leases, other legal documents, notes, correspondence, and the
12 like. On a daily basis, I witness and/or participate in negotiations with creditors, vendors, and
13 customers of the Debtor, and I work closely with personnel from all aspects of the Debtor's
14 operations. Based upon all of the foregoing, I have developed an intimate familiarity with the
15 Debtor's books and records, operational and financial details, business and financial history, and
16 current business and financial situation.

17 4. On January 18, 2011 (the “Petition Date”), the Debtor filed a voluntary petition
18 (“Petition”) for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy
19 Code”). The Debtor continues to operate its business and manage its affairs as a debtor in
20 possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

1

INTRODUCTION

23 5. The Debtor filed this Case to preserve the going-concern value of its business as
24 it pursues a sale of substantially all of its assets pursuant to section 363 of the Bankruptcy Code.
25 As discussed in further detail below, after years of implementing and considering numerous
26 options to restructure its business, the Debtor decided that a sale of substantially all of its assets
27 was in the best interests of its stakeholders. After fully marketing those assets, the Debtor
28 entered into an asset purchase agreement with the Stalking Horse Bidder (defined below) for

1 \$2.0 million, which agreement is subject to overbid and bankruptcy court approval. The offer by
 2 the Stalking Horse Bidder establishes a baseline bid which other interested purchasers may
 3 improve upon pursuant to bidding procedures that the Debtor seeks to implement through the
 4 Sale Procedures and Approval Motion (defined below). These bidding procedures will ensure
 5 that the highest or best offer for the Debtor's assets is obtained and their implementation is
 6 consistent with the Debtor's fiduciary duties to maximize value for its estate and its stakeholders.
 7 Upon information and belief, the Debtor's largest unsecured creditors, Timeline Venture
 8 Investors I, LLP ("Timeline Venture") and Sirius Industries, LLC ("Sirius"), support the Debtor's
 9 efforts to sell its assets and Debtor's entry into the assets purchase agreement with the Stalking
 10 Horse Bidder. I have had communications with representatives of Timeline Venture and Sirius in
 11 which they indicated their support for the proposed sale. I believe that the sale by the Debtor of
 12 substantially all of its assets to the Stalking Horse Bidder under the APA is in the best interests of
 13 the Debtor's estate and stakeholders.

14 6. After the filing of the Petition, the Debtor filed (concurrently with this
 15 Declaration), the following Motions:

16 a. First Day Motion By Debtor For Order (A) Authorizing Continued Use
 17 Of Debtor's Cash Management System, (B) Authorizing Maintenance And Continued
 18 Use Of Debtor's Existing Bank Accounts and Business Forms, and (C) For Other Relief
 19 (the "Cash Management Motion");

20 b. First Day Motion by Debtor for Order (A) Prohibiting Utility Providers
 21 from Altering, Refusing or Discontinuing Service, (B) Deeming Utility Companies
 22 Adequately Assured of Future Performance, and (C) Establishing Procedures for
 23 Determining Adequate Assurance of Payment (the "Utilities Motion");

24 c. First Day Motion by Debtor for Order: (1) Authorizing, but not Requiring,
 25 Payment of Pre-Petition (A) Wages, Salaries and Other Compensation; (B) Employee
 26 Benefits; (C) Reimbursable Expenses; (D) Related Taxes; and (2) Authorizing and
 27 Directing Financial Institutions to Receive, Process, Honor, and Pay All Checks
 28 Presented for Payment (the "Wage Motion");

d. First Day Motion By Debtor For Order Limiting Scope of Notice (the “Motion to Limit Notice”);

e. Motion For Orders (1) Approving Bidding Procedures And Protections And (2) Approving Sale Transaction (the “Sale Procedures and Approval Motion”).

5 7. The Debtor, through the Sale Procedures and Approval Motion, seeks to approve
6 the sale to the Stalking Horse Bidder subject to competitive bidding in an auction process. As
7 detailed below, the Debtor will provide notice of the proposed sale to outside parties, who will
8 have the opportunity to submit indications of interests and competing bids. This will ensure that
9 the Debtor's estate receives maximum value for the Debtor's assets. The Debtor is seeking to
10 consummate a sale within approximately 70 days of the petition date. The Debtor's limited cash
11 flow necessitates that a sale be completed as quickly as reasonably possible.

12 8. Part II of this Declaration provides an overview of the Debtor's business,
13 organizational and liability structure and a discussion of the Debtor's financial performance and
14 the events that compelled the commencement of the Case, and the Debtor's chapter 11 goals;
15 and Part III sets forth other relevant facts in support of the First Day Motions.

II.

BACKGROUND OF THE DEBTOR'S BUSINESS AND EVENTS LEADING TO CHAPTER 11 FILING

A. The NexPrise Business

20 9. NexPrise is the original innovator of Enterprise Content Management (“ECM”)
21 solutions such as WebSpace and InfoPrise. WebSpace is part of the cloud model of computing,
22 consisting of internet-based computing whereby shared resources, software and information are
23 provided to computers and other devices on-demand. The NexPrise ECM platform was
24 originally conceived to support secure multi-organizational collaboration in the aerospace and
25 defense industry. Since its founding, NexPrise has developed a reputation as a global process
26 and document management company that delivers flexible solutions with absolute immediacy.

27 10. NexPrise began as a successful DARPA funded project within Lockheed
28 Martin's Palo Alto Research Lab. Spun off as an independent company in February 1997,

1 NexPrise Corporation has spent over 15 years developing ways to make it easier for users to
 2 collaborate and mange information online.

3 11. NexPrise was acquired in 2001 by Ventro Corporation, which was formerly known
 4 as Chemdex Corporation (“Chemdex”), which was also founded in 1997 and was one of the first
 5 online business to business (“B2B”) e-commerce companies. Chemdex provided an online
 6 marketplace for sales of chemicals, enzymes, lab equipment, biotech products like peptides, and
 7 many types of chemical reagents. Once an IPO darling of Wall Street, Chemdex was never
 8 profitable and it became one of many companies destroyed in the dot-com crash of the early 2000s.

9 12. Chemdex went public on the NASDAQ exchange in July 1999 (ticker symbol
 10 CMDX). At the time, Chemdex recorded quarterly sales of \$165,000, mostly to Genentech.
 11 Chemdex raised \$112.5 million at IPO, and sold \$250 million in bonds (the “Bond Issuance”) to
 12 continue funding of the business. Recognizing the early market interest of the online B2B
 13 marketplaces at that time, Chemdex renamed the company Ventro Corporation (“Ventro”) in
 14 February 2000. Ventro merged with a number of related businesses, including Specialty MD
 15 and Promedix (both specialty medical technology providers) and engaged in join ventures with
 16 Tenet Healthcare and VWR Scientific. By 2000, the company’s market capitalization had
 17 grown to over \$4 billion.

18 13. When, as with other similar companies, investors lost confidence in highly priced
 19 but unprofitable internet ventures, Ventro’s stock plummeted to only 1% of its previous value,
 20 and, unable to find a buyer for the business, Ventro shut down its Chemdex division in early
 21 2001. Ventro then concentrated only on providing B2B exchange services to exchanges rather
 22 than actually running an exchange. Because the B2B exchange services business was not active,
 23 however, Ventro began to look for an operating business to acquire.

24 14. In August 2001, Ventro acquired privately held NexPrise for its web-based ECM
 25 technology and shortly thereafter changed its name to NexPrise, Inc. NexPrise operates out of its
 26 headquarters located in Carlsbad, California and employs nine people. NexPrise has over 50
 27 customers and its product usage has spread to over 25,000 users across multiple industries
 28 including aerospace, defense, automotive, high-tech, pharmaceutical, and medical device

1 companies.

2 **B. The Debtor's Recent Financial History**

3 15. The Debtor's revenue has been relatively flat from the years 2005 through 2009,
 4 running at an average of approximately \$2.4 million per year. While the Debtor believes that it
 5 would have steadily increasing revenue over the next two years, the Debtor has not been
 6 servicing its funded debt from its Bond Issuance since 2005,¹ and despite the Debtor's historical
 7 and projected revenue, the Debtor has limited cash flow and would soon be unable to meet some
 8 of its other obligations.

9 16. Over the past six years, the Debtor has attempted to recapitalize, reorganize, or
 10 restructure so that it could acquire new capital to grow its business in light of its projected
 11 increases in revenues. These efforts, however, have been unsuccessful primarily due to the
 12 outstanding debt remaining from the Bond Issuance. Through proposals such as conversion and
 13 buy-back offers, the Debtor was able to reduce the original \$250 million debt from the Bond
 14 Issuance to the approximate \$4.8 million amount that remains outstanding today. The holders of
 15 the remaining \$4.8 million have not responded to the Debtor's proposals to restructure their debt.
 16 The Debtor believes these holders are small stakeholders who have written off or abandoned
 17 their investment and thus are not easily locatable.

18 **C. The Debtor's Management Team**

19 17. As stated above, I am the Chief Executive Officer and President, and a member
 20 of the Board of Directors. Patrick Clark is the Chairman of the Board of Directors. Ted Lesher
 21 is the Vice President of Sales & Marketing. Steven Smith is the Director of Professional
 22 Services. Brian Deng is the Director of Product Development.

23 **D. Corporate Structure and Ownership**

24 18. The Debtor is a publicly traded corporation (ticker symbol NXPS.PK) whose
 25 shares of common stock trade "over-the-counter" on the "pink sheets," i.e., Pink Quotes from the
 26 Pink Quote OTC, Inc.. There are 3,389,791 shares of common stock outstanding. A List Of
 27 Equity Security Holders (holders of common stock) of the Debtor has been filed concurrently

28 ¹ Note: the bond debt has not been paid since 2005; Sirius and Timeline debts have been paid more recently.

1 with the Petition. The Debtor deregistered with the SEC in 2005 and no longer files reports with
 2 the SEC.

3 **E. Asset and Debt Structure**

4 **1. Current Assets**

5 19. The Debtor's most recent financial statements indicate that as of January 12,
 6 2011, the book value of the Debtor's current assets were \$455,479.41, including \$57,812.38 of
 7 cash on hand. As of January 12, 2010, the book value of Debtor's total assets was \$519,553.74.

8 **2. Secured Debt**

9 20. Upon information and belief, the Debtor currently has no secured debt
 10 obligations.

11 **3. Unsecured Debt**

12 21. As of the Petition Date, the Debtor has approximately \$6.8 million of priority and
 13 general unsecured obligations that are held by approximately 100 creditors, including
 14 employees.

15 22. To the best of the Debtor's knowledge, its largest unsecured creditors are
 16 Timeline Venture and Sirius. Timeline holds an unpaid note with balance of approximately \$1.2
 17 million. The Debtor's obligations under the note have been the subject of a forbearance
 18 agreement with Timeline Venture, but the Debtor is no longer current on its obligations to
 19 Timeline Venture under the note as modified by the forbearance agreement.

20 23. The Debtor's second largest unsecured creditor is Sirius, which holds a note with
 21 an approximately \$630,000 balance. The Debtor remained current on its interest payment
 22 obligations under this note through October 2010.

23 24. As noted above, there are approximately \$4.8 million in outstanding
 24 subordinated bonds, the holders of which have not responded to the Debtor's proposals to
 25 restructure their debt. The Debtor believes these holders are small stakeholders who have
 26 written off or abandoned their investment and thus are not easily locatable. By agreement,
 27 payment to the subordinated bondholders is subordinated to the payment of the Debtor's
 28 obligations to Timeline Venture, Sirius, and other general unsecured creditors.

1 25. Through its Wage Motion, the Debtor is seeking the authority to honor all of its
 2 employee benefit programs in the ordinary course of business, subject to applicable statutory
 3 limits.

4 26. The Debtor is generally current on its obligations to its suppliers, vendors, and
 5 other trade creditors. The Debtor estimates that there will be approximately \$90,000 in
 6 prepetition trade creditor claims as of the Petition Date.

7 **F. Sale of Assets**

8 27. As detailed in Sale Procedures And Approval Motion, the Debtor is seeking to
 9 sell substantially all of its assets. The Debtor and the Stalking Horse Bidder have entered into a
 10 January 17, 2011 asset purchase agreement (the “APA”) with respect to the sale and purchase of
 11 those assets for \$2.0 million.

12 **1. Alternatives to Sale**

13 28. As noted above, the Debtor made offers to convert or buy back debt from the
 14 Bond Issuance and through the years significantly reduced the amount of the Bond Issuance from
 15 \$250 million to approximately \$4.8 million. During the past year, the Debtor negotiated with the
 16 Indenture Trustee about various proposals to restructure the remaining \$4.8 million. Those
 17 negotiations ultimately broke down when the Indenture Trustee demanded payment from the
 18 Debtor of certain expenses, including the payment in full of accrued administrative fees under the
 19 indenture and attorney’s fees incurred by the Indenture Trustee, before the Indenture Trustee
 20 would continue negotiations. The Debtor’s cash flow situation at the time made such a payment
 21 untenable. Thus, negotiations did not continue. The Debtor has also explored restructuring the
 22 company with its largest creditors, Timeline Ventures and Sirius Industries. Those efforts were
 23 also unsuccessful. The Debtor has attempted to raise capital from other sources, including third
 24 party lenders and other investors, but those efforts were also unsuccessful. I believe that the lack
 25 of viable out-of-court restructuring alternatives has left the Debtor with no other choice but to sell
 26 its assets through a bankruptcy process.

27 **2. Marketing of Assets and Decision to Sell**

28 29. In early August 2010 (after consultation with its largest creditors, Timeline

1 Ventures and Sirius Industries), the Debtor began an extensive marketing and sale process,
 2 aggressively canvassing the marketplace to locate potential purchasers. The Debtor interviewed
 3 several investment banks to assist in this process, but determined that the cost of marketing the
 4 company through an investment bank would not be nearly as cost efficient as having the company
 5 market its assets on its own. Thus, the Debtor chose to market its assets on its own with the
 6 fallback of using an investment bank if its marketing efforts were unsuccessful. During August
 7 and September 2010, the Debtor utilized analyst reports from industry research organizations
 8 such as Gartner and Forrester Research, along with its own knowledge of companies in the
 9 industry to identify potential purchasers whose businesses were compatible with that of NexPrise
 10 and who were in a financial position to acquire NexPrise's assets.

11 30. Through this process, NexPrise contacted approximately 50 potential purchasers.
 12 Among other things, NexPrise provided these entities with details regarding the company's
 13 products, customers, users, revenue, and employees. Approximately 10 of the solicited entities
 14 asked NexPrise for additional information and NexPrise continued a dialogue with those entities.
 15 Additionally, NexPrise received a referral from one of the solicited entities to a company
 16 NexPrise had not originally targeted, Trubiquity, Inc (the "Stalking Horse Bidder"). Further
 17 communications with the Stalking Horse Bidder and other entities led to the Debtor giving
 18 presentations to five entities that had expressed an interest in acquiring NexPrise's assets. After
 19 these presentations, three of the five entities asked NexPrise for detailed face-to-face technical
 20 demonstrations. At the conclusion of the technical demonstrations, only the Stalking Horse
 21 Bidder chose to proceed with an offer to purchase NexPrise's assets.

22 31. The Debtor, in consultation with its advisors, engaged in arm's-length, good-faith
 23 negotiations with the Stalking Horse Bidder. Following extensive negotiations, on November 4,
 24 2010, the Debtor signed a letter of intent (the "Letter of Intent") with the Stalking Horse Bidder
 25 expressing the intent to negotiate an asset purchase agreement. On January 17, 2011, the Debtor
 26 and the Stalking Horse Bidder, after negotiations involving their respective counsel, entered into
 27 the APA. If any other qualified bidder submits a timely qualified bid, the Debtor intends to
 28 conduct a Court-approved auction and to sell the assets to the highest and best bidder at that

1 auction, subject to Court approval.

2 **3. Asset Valuation**

3 32. The Debtor has not commissioned any formal valuations of the Debtor's assets due
4 to the attendant high expenses of doing so. The Debtor, however, believes that it has market
5 tested the value of its assets through the marketing process described above and that this marketing
6 process, together with the auction process outlined in Sale Procedures and Approval Motion, will
7 appropriately value the Debtor's assets.

8 **4. Relationship of Buyer**

9 33. To the best of my knowledge, the Stalking Horse Bidder does not have any
10 connections with the Debtor, its creditors, any other party in interest, their respective attorneys,
11 accountants, the United States Trustee or any person employed in the office of the United States
12 Trustee.

13 **5. Post-Sale Relationship with Debtor**

14 34. To the best of my knowledge, the Stalking Horse Bidder intends to hire all the
15 current employees of the Debtor after the consummation of the sale, assuming it is approved.

16 **6. Insider Compensation**

17 35. I have an employment agreement with the Debtor dated April 1, 2009. Under my
18 employment agreement, I receive an annual salary of \$250,000.00, plus the opportunity to
19 participate in certain benefits and programs, including health, dental, vision, and paid time off.

20 36. Director and Chairperson of the Board of Directors Pat Clark has a consulting
21 agreement with the Debtor under which he is paid \$108,000 annually.

22 **III.**

23 **FIRST DAY MOTIONS**

24 **A. Cash Management Motion**

25 37. Pursuant to the Cash Management Motion, the Debtor seeks an order from this
26 Court: (i) authorizing the Debtor to maintain its existing cash management system and business
27 forms; (ii) waiving the requirements that, as of the date of the filing of the petition, the Debtor
28

1 close its existing bank account – and open new – “debtor-in-possession” books, records, and bank
 2 accounts; (iii) directing banks and financial institutions to honor and process prepetition checks
 3 and transfers; and (iv) waiving certain guidelines promulgated by the United States Trustee.

4 38. To maximize the estate’s value and reorganize efficiently, the Debtor must
 5 continue to use its existing bank account and cash management system. Maintaining the
 6 prepetition status of its cash management system allows the Debtor to continue the uninterrupted
 7 operation of its business. Essentially, the Debtor maintains a centralized cash management
 8 system, involving established banking relationships and a single account to manage and control
 9 receipts and disbursements.

10 39. The Debtor’s cash management system allows the Debtor to effectively and
 11 efficiently run its business. The Debtor believes that the success of its reorganization is best
 12 ensured by minimal interference with its ordinary day-to-day affairs, including its current cash
 13 management system, which is essential to its business. Disturbance of the Debtor’s existing cash
 14 management system would disrupt the Debtor’s ability to maximize the value of its assets for the
 15 benefit of all of its creditors and employees.

16 40. Additionally, and in the ordinary course of its business, the Debtor uses checks
 17 labeled “NexPrise”, stationery labeled “NexPrise” and other business forms, including electronic
 18 business forms, stamped with “NexPrise.” Based on the nature and scope of the Debtor’s
 19 business – and the many other parties with whom the Debtor transacts – altering or changing the
 20 Debtor’s checks, stationary, and other business forms would needlessly affect the ease with which
 21 the Debtor conducts business. Although altering or changing these items is possible, significant
 22 time and expense would be required. The Debtor submits that printing new checks, stationary,
 23 and other business forms would engender confusion and create undue delay among its employees,
 24 customers and other third parties.

25 41. To that end, the Debtor requests authorization to continue using its electronic
 26 business forms (including, but not limited to, letterhead and purchase orders) and its checks for at
 27 least 60 days without the imprinted designation of “debtor in possession.” This will give the
 28 Debtor enough time to modify its electronic checks and business forms to include reference to

1 "Debtor in Possession" and the Case number.

2 42. The Debtor requests authorization to continue using all existing checks and
 3 preprinted business forms without reference to its "debtor in possession" status until such forms
 4 are depleted, at which time the Debtor, if it is still a debtor in possession, will order forms with
 5 "Debtor in Possession" and the case number printed on them. The manner that the Debtor
 6 conducts business requires that the Debtor be authorized to continue using the above described
 7 forms and checks without alteration or modification until appropriate arrangements may be made.
 8 Sixty (60) days is a reasonable amount of time to alter its electronic business forms and checks.
 9 If the Debtor can make these modifications any sooner, it will immediately begin using forms that
 10 have "Debtor in Possession" printed on them. As a result of the Debtor following proper notice
 11 procedure, as set forth by the Bankruptcy Rules and the Local Bankruptcy Rules, those
 12 conducting business with the Debtor will already undoubtedly be aware of the Debtor's "debtor-
 13 in-possession" status.

14 43. Additionally, section B of the Operating and Reporting Requirements for Chapter
 15 11 Cases (the "UST Operating Requirements") provided by the United States Trustee (the
 16 "UST") for the Southern District of California sets forth certain requirements related to books,
 17 records and bank accounts, as discussed in more detail in the Cash Management Motion. The
 18 Debtor is seeking a waiver from these UST Operating Requirements because the Debtor intends
 19 to sell substantially all its assets and then cease operations. Compliance with the UST Operating
 20 Regulations will be costly and will unnecessarily disrupt the Debtor's ongoing business
 21 operations pending a sale, significantly jeopardizing revenue.

22 44. The relief requested by the Cash Management Motion is necessary and in the best
 23 interests of the Debtor's estate and its creditors. Such relief ensures that the Debtor's business
 24 operations will not be disrupted pending the contemplated sale under section 363 of the
 25 Bankruptcy Code.

26 **B. Utilities Motion**

27 45. Pursuant to the Utilities Motion, the Debtor seeks an order from this Court
 28 approving procedures for providing its utility companies with adequate protection. To ensure the

1 continued and uninterrupted provision of utility services (the “Utility Services”) to the Debtor,
 2 the Debtor seeks entry of an order prohibiting utility companies (each, a “Utility Company”)
 3 from altering, refusing, or discontinuing any Utility Service.

4 46. Attached as Exhibit “A” to the Utilities Motion is a list of the Utility Companies,
 5 the type of service provided by each Utility Company and the average monthly amount invoice
 6 by each Utility Company during the prior twelve (12) month period.

7 47. At this critical time, and given the nature of the Debtor’s business, uninterrupted
 8 Utility Services are essential to the ongoing operations of the Debtor’s business and to the
 9 preservation of value of the Debtor’s estate. Any interruption in the delivery of Utility Services,
 10 however brief, will be disruptive to the Debtor’s operations.

11 48. In general, the Debtor has established a good payment history with all of the
 12 Utility Companies, consistently making payments on a regular and timely basis. To the best of
 13 my knowledge, there are few, if any, defaults or arrearages of any significance with respect to the
 14 Debtor’s undisputed invoices for prepetition Utility Services, other than payment interruptions
 15 that may be caused by the commencement of this chapter 11 case. The Debtor anticipates that it
 16 will pay all utility bills for the postpetition Utility Services as billed and when due subject to the
 17 Debtor’s rights, if any, in the ordinary course, to contest, among other things, the amount of a bill
 18 or the services rendered.

19 49. The Debtor proposes to give, within thirty (30) days of the Petition Date, the
 20 Utility Companies adequate assurance of payment for its future services in the form of cash
 21 deposits (the “Adequate Assurance Deposit(s)”) in amounts that are equal to the average monthly
 22 amount invoiced by each Utility Company during the prior twelve (12) month period, as listed in
 23 Exhibit “A” to the Utilities Motion, minus the amount of any security deposit or certificate of
 24 deposit already made to, or for the benefit of each Utility Company.

25 50. The Debtor submits that the Adequate Assurance Deposit, in conjunction with the
 26 Debtor’s ability to pay for future Utility Services in the ordinary course of business (collectively,
 27 the “Proposed Adequate Assurance”), constitute adequate assurance to the Utility Companies as
 28 contemplated by section 366 of the Bankruptcy Code.

1 51. In light of the severe consequences to the Debtor of any interruption in Utility
 2 Services, but recognizing the right of the Utility Companies to evaluate the Proposed Adequate
 3 Assurance independently, the Debtor proposes the following Adequate Assurance Procedures, to
 4 the extent a Utility Company is not satisfied with the Proposed Adequate Assurance:

5 (a) If a Utility Company is not satisfied with the assurance of
 6 future payment provided by the Debtor, such Utility Company
 7 must, within 30 days of the entry date of the order granting this
 8 Utilities Motion (the “Request Deadline”) serve a written request (a
 9 “Request”) so that it is actually received by the Request Deadline
 10 upon counsel for the Debtor, DLA Piper LLP (US), 550 S. Hope
 11 Street, Suite 2300, Los Angeles, California 90071-2678 (Attention:
 12 Bertrand Pan), setting forth the location(s) for which Utility
 13 Services are provided, the account number(s) for such location(s),
 14 the outstanding balance for each account, a summary of the
 15 Debtor’s payment history on each account, and an explanation of
 16 why the Adequate Assurance Deposit is not adequate assurance of
 17 future payment.

18 (b) Without further order of the Court, the Debtor, in its sole
 19 discretion, may, but is not required, to enter into agreements
 20 granting additional adequate assurance to a Utility Company timely
 21 serving a Request, if the Debtor determines such Request is
 22 reasonable.

23 (c) If the Debtor believes that a Request is unreasonable, then it
 24 shall, within 30 days after the Request Deadline, file a motion (the
 25 “Determination Motion”) pursuant to 11 U.S.C. § 366(c)(3) seeking
 26 an order that the Adequate Assurance Deposit, plus any additional
 27 consideration offered by the Debtor, in its discretion, constitutes
 28 adequate assurance of payment. Pending notice and a hearing on
 1 the Determination Motion, the Utility Company that is the subject
 2 of an unresolved Request may not alter, refuse, or discontinue any
 3 Utility Services to the Debtor, or otherwise discriminate against the
 4 Debtor.

5 (d) The Adequate Assurance Deposit shall be deemed adequate
 6 assurance of payment for any Utility Company that fails to timely
 7 make a Request.

8 52. The Debtor reserves the right to supplement the list of Utility Companies attached
 9 as Exhibit “A” to the Utilities Motion, without further order of the Court, if a Utility Company
 10 has been omitted, mistakenly included, or commences providing Utility Services to the Debtor
 11 postpetition. To the extent the Debtor identifies additional Utility Companies, the Debtor will
 12 promptly file an amendment to the list of Utility Companies, as identified on Exhibit “A” to the
 13 Utilities Motion, adding the name and other information of the newly-identified Utility Company,
 14 and promptly serve copies of the order (the “Utilities Order”) granting this Utilities Motion on
 15

1 such newly-identified Utility Companies (the “Supplemental Service”).

2 53. The Debtor will provide an Adequate Assurance Deposit for the newly-identified
 3 Utility Company within 30 days of the entry of the Utilities Order or on or before 30 days after
 4 the Supplemental Service, whichever is later. If the newly-identified Utility Company has not
 5 provided Utility Services to the Debtor prior to the Petition Date, then such Adequate Assurance
 6 Deposit will be equal to the Debtor’s expected monthly invoice amount for the Utility Services to
 7 be provided. The newly-identified Utility Company shall have 30 days from the date of the
 8 Supplemental Service to make a Request. If such Request is made, the Adequate Assurance
 9 Procedures, as detailed above, shall apply to this Court’s consideration and resolution of such
 10 Request.

11 54. The Debtor additionally requests that the Utilities Order provide that the Utility
 12 Companies must refund any Adequate Assurance Deposit to the Debtor within ten (10) business
 13 days of (x) the date the Debtor terminates the services of a Utility Company or (y) the date of
 14 entry of an order closing this chapter 11 case, if not returned or applied earlier, whichever date is
 15 later.

16 55. The Debtor’s Proposed Adequate Assurance, in conjunction with the Adequate
 17 Assurance Procedures, are not prejudicial to the rights of any Utility Company, and the
 18 importance of the continuation and uninterrupted flow of Utility Services cannot be understated.
 19 The relief requested by the Utilities Motion is necessary and in the best interests of the Debtor’s
 20 estate and its creditors. Such relief ensures that the Debtor’s business operations will not be
 21 disrupted, as well as provides the Utility Companies and the Debtor with an orderly, fair
 22 procedure for determining adequate assurance.

23 **C. Wage Motion**

24 56. Due to the highly technical nature of its business, the value of the Debtors’ assets
 25 depends on a highly skilled and trained workforce. The Debtor employs nine (9) individuals (the
 26 “Employees”), each of whom performs a function that is critically important to the Debtor’s
 27 efforts. All of the Employees are full-time. All of the Debtor’s Employees are paid
 28 semimonthly (*i.e.*, twice every month) by way of direct deposit. Employees are paid on a salary

1 basis, and some employees also receive commissions based on total sales. The Debtor's last
 2 payroll was issued on January 14, 2010 and covered the period from January 1, 2011 through
 3 January 15, 2011. The next payroll is expected to take place on January 31, 2011 (the "Next
 4 Payroll") and will cover the period from January 16 through January 31, 2011 and is expected to
 5 total approximately \$47,000. \$4,525.60 of the Next Payroll covers the period from January 16,
 6 2011 to January 17, 2011, which is the entire prepetition period for which Wages are owed
 7 (collectively, the "Prepetition Wages").

8 57. Pursuant to the Wage Motion, the Debtor is seeking authority to honor the
 9 Employees' wages and other payment obligations related to the prepetition period (the
 10 "Prepetition Employee Obligations") in the ordinary course of business. As of the Petition Date,
 11 the Debtor has paid all Prepetition Employee Obligations, except for 1) the Prepetition Wages, 2)
 12 amounts that may owed under the Debtor's policy for paid time off, pursuant to which Employees
 13 are generally paid for any unused vacation or sick leave at the time employment is terminated, 3)
 14 certain amounts owed to Employees under the Debtor's policy of reimbursing certain business-
 15 related expenses, and 4) any commissions that may have been earned prepetition. Accordingly,
 16 the Debtor seeks authority to continue, in the ordinary course of business, those policies and
 17 practices established prior to the Petition Date. Specifically, the Debtor is requesting that the
 18 Court enter an order authorizing, but not requiring, the Debtor to: (i) honor, in its discretion,
 19 subject to applicable statutory limitations, and in accordance with the policies and practices
 20 established prior to the Petition Date, all accrued wages, salaries, and other compensation,
 21 including, without limitation, medical, dental and vision insurance coverage, disability insurance,
 22 accidental and death and dismemberment, life insurance workers' compensation insurance,
 23 reimbursable expenses, and retiree health benefits that have been earned and accrued by virtue of
 24 the services rendered by the Employees prior to the Petition Date; (ii) utilize "paid time off" in
 25 the ordinary course of business (notwithstanding the statutory cap) and to pay terminated
 26 employees for prepetition compensation; (iii) pay all applicable federal, state and local taxes,
 27 deductions and withholdings in connection with the payments made as described under paragraph
 28 (i), as set forth above, and to forward the Employee Deductions to the appropriate agency or

1 third-party plan administrator(s); (iv) pay all amounts on account of certain business-related
 2 expenses which may not have been presented for payment or may not have cleared the financial
 3 institutions as of the Petition Date; (v) authorize and direct financial institutions to receive,
 4 process, honor and pay all checks presented for payment, and to reissue checks as and when
 5 necessary to cover amounts owing on any checks that have been dishonored by any financial
 6 institution.

7 58. A failure to pay the Prepetition Employee Obligations would likely create
 8 personal hardship for the Employees, be extremely detrimental to the Employees' loyalty and
 9 morale, and would likely result in Employees resigning, thereby jeopardizing the Debtor's ability
 10 to consummate a sale or other change-of-control transaction that will provide maximum value to
 11 the Debtor's estate. Since the Debtor's goal is to maximize the value of its assets for the benefit
 12 of the estate and its creditors, it is imperative that the Debtor be authorized, but not required, to
 13 pay or honor, in its discretion, the Prepetition Employee Obligations including, without
 14 limitation, prepetition wages, salaries and certain employee benefits, and to minimize any adverse
 15 impact that this bankruptcy proceeding may have on the Debtor's workforce and the orderly
 16 administration of the estate. Specific information related to each of the Prepetition Employee
 17 Obligations and the relief requested in the Wage Motion is set forth in the Wage Motion.

18 **D. Motion to Limit Notice**

19 59. By the Motion to Limit Notice, the Debtor seeks an order authorizing it limit
 20 notice of the following Limited Notice Matters (as defined below) in this case to the following
 21 parties: (1) the Office of the United States Trustee; (2) counsel for any official unsecured creditors
 22 committee appointed in this chapter 11 case, or until such time as counsel is named, members of the
 23 committee, or until such time as a committee is appointed, the creditors appearing on the list of the
 24 twenty largest unsecured creditors filed in accordance with Bankruptcy Rule 1007(d); (3) any
 25 creditors asserting secured claims; (4) parties that file with the Court and serve upon the Debtor
 26 request for notice of all matters in accordance with Bankruptcy Rule 2002; (5) U.S. Bank, N.A. as
 27 Trustee for 6% Convertible Subordinated Notes Due 2007; (6) Trubiquity, Inc.; and (7) any party
 28 with a specific pecuniary interest of which the Debtor is aware with respect to a particular filing.

1 If the relief requested in the Motion to Limit Notice is granted, the burden, complication, delay
 2 and cost to the Debtor's estate that is associated with administering this case and providing notice
 3 of the proceedings in this case to numerous parties would be dramatically reduced.

4 60. The Debtor's mailing matrix in this case contains approximately 100 creditors
 5 and other interested parties. The Debtor may identify additional creditors and anticipates that
 6 various other parties may make claims against the estate. Requiring notice to and service upon
 7 all of these parties would substantially increase the cost of administering the estate without
 8 conferring any meaningful benefit on the estate. The Debtor submits that the limited scope of
 9 notice proposed herein is necessary to avoid the administrative burdens and costs that serving
 10 notice of all pleadings on these parties would impose upon the Debtor while assuring that the
 11 interested parties in this case receive proper and sufficient notice of all matters.

12 The Debtor requests that the Court limit the scope of notices, motions, or applications,
 13 including, but not limited to, the following matters (the "Limited Notice Matters"):

- 14 a) any proposed use, sale or lease of property of the estate other than in the
 15 ordinary course of business pursuant to section 363 of the Bankruptcy Code
 and Bankruptcy Rules 2002(a)(2), 4001(b) and 6004;
- 16 b) any proposed assumption, rejection, or assumption and assignment of an
 17 executory contract or unexpired lease pursuant to section 365 of the
 Bankruptcy Code or Bankruptcy Rule 6006(a) or (c);
- 18 c) any proposed extension of the Debtor's exclusive time to file a plan of
 19 reorganization and solicit acceptance thereof (including, without limitation,
 the time to file a disclosure statement) pursuant to section 1121 of the
 Bankruptcy Code or Bankruptcy Rule 3016;
- 20 d) any proposed approval or compromise or settlement of a controversy
 21 pursuant to Bankruptcy Rules 2002(a)(3) and 9019;
- 22 e) any proposed abandonment or disposition of property of the estate and the
 23 hearing, if any, thereon, pursuant to section 554 of the Bankruptcy Code or
 Bankruptcy Rule 6007(a) or (c);
- 24 f) any proposed modification of the automatic stay pursuant to section 362 of
 25 the Bankruptcy Code or Bankruptcy Rules 4001(a) or 9014;
- 26 g) any proposal to prohibit or condition the use, sale or lease of property
 27 pursuant to section 363 of the Bankruptcy Code or Bankruptcy Rule 4001
 (a);
- 28 h) any proposal to obtain credit on a secured basis or out of the ordinary course
 of business or grant a lien pursuant to section 364 of the Bankruptcy Code or

Bankruptcy Rule 4001(b) or (c);

- i) any proposed agreement relating to relief from the automatic stay, prohibiting or conditioning the use, sale or lease of property, providing adequate protection, use of cash collateral and obtaining credit pursuant to sections 361, 362, 363, or 364 of the Bankruptcy Code or Bankruptcy Rule 4001(d);
- j) any proposed application for employment of professionals pursuant to sections 327, 1103, and/or 1104 of the Bankruptcy Code or Bankruptcy Rule 2014;
- k) any proposed application for compensation or reimbursement of expenses of professionals, pursuant to sections 328, 329, 330, or 331 of the Bankruptcy Code or Bankruptcy Rules 2002(a)(6), 2016, 2017 and 6005 and compensation to debtors' insiders pursuant to Local Bankruptcy Rule 4002-2;
- l) any verified statement filed by any entity or committee (other than those appointed pursuant to section 1102 and 1104 of the Bankruptcy Code) representing more than one creditor pursuant to Bankruptcy Rule 2019(a) and any motion filed in respect thereof pursuant to Bankruptcy Rule 2019(b);
- m) any proposed objections to claims pursuant to section 502 of the Bankruptcy Code or Bankruptcy Rule 3012;
- n) any proposed reconsideration of claims pursuant to Bankruptcy Rule 3008;
- o) any proposed valuation of security pursuant to section 506 of the Bankruptcy Code or Bankruptcy Rule 3012;
- p) any proposed redemption of property from lien or sale pursuant to Bankruptcy Rule 6008; and
- q) any hearing on any contested matter in this case that requires notice to creditors pursuant to the Bankruptcy Code, Bankruptcy Rule 9014 or the Local Rules.

61. Notwithstanding the foregoing, the Debtor is prepared to provide notice to all creditors and interested parties of hearings on any proposed disclosure statement and plan of reorganization and other actions requiring notice as described in Bankruptcy Rules 2002(a)(4), (5), (7) and (8).

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed on January 18, 2011.

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4 John Lynch
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